

(CR) General Information – NRCS and Cultural Resources

**STATE LEVEL AGREEMENT AMONG
THE USDA NATURAL RESOURCES CONSERVATION SERVICE
AND
THE MAINE STATE HISTORIC PRESERVATION COMMISSION**

This memorandum of agreement is entered into by and between the Maine Historic Preservation Commission (hereafter referred to as MHPC) and the United States Department of Agriculture, Natural Resources Conservation Service (hereafter referred to as NRCS).

WHEREAS, the NRCS is required by law to comply with the National Historic Preservation Act (NHPA) (16 U.S.C. 470f, as amended) and related legislation dealing with cultural resources, and to follow NRCS policies and procedures for protecting cultural resources issued in the NRCS General Manual (GM 420, Part 401, Cultural Resources Archaeological and Historic properties), AND any Maine Supplements, in Attachment I; and Cultural Resources Handbook (GM 420 – Part 601, Subpart C and any appropriate Supplements) Procedures for Complying with Section 106 (Attachment II); and

WHEREAS, the Maine Historic Preservation Commission (MHPC) is the responsible State entity for the protection of cultural resources, and the State Historic Preservation Officer (hereafter referred to as SHPO) is the director of the MHPC and is responsible for over seeing cultural resource management and protection programs in Maine; and

WHEREAS, the NRCS General Manual (GM 420, Part 401.33) requires each state NRCS office and its counterpart SHPO to develop a state level agreement (SLA) as a means to implement the agency's responsibilities under cultural resources legislation in order to expedite the compliance process, speed delivery of conservation, and protect cultural resources; and

WHEREAS, all the definitions in NRCS GM 420 Part 401.02 and subsequent changes consistent with changes or amendments to the National Historic Preservation Act or other laws are applicable throughout this state level agreement unless otherwise noted;

Now, therefore, in view of the above considerations, the SHPO and the NRCS agree to the following stipulations and will ensure they are implemented:

1. Definition of "Undertaking"

Undertakings is defined in 36 CFR 800.16 and is as follows: an Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

NRCS in consultation with the SHPO will review all of NRCS practices carried out within the State of Maine to decide which of these practices do not have the potential to affect cultural resources. These practices will be listed as Attachment III to this agreement and will NOT be subject to cultural resources evaluations described in Stipulation 2 of this agreement. New and

revised practices will be submitted to the SHPO during the review process established by NRCS for Standards and Specifications.

Practices not specifically covered by this document will be presumed to have the potential to affect cultural resources until the list (Attachment III) has been amended to include the practice. Attachment III will be amended as needed to add or delete practices on an annual or as needed basis, agreed to by NRCS and the SHPO. All other activities, which include construction or ground-disturbing actions, which are not specifically considered “practices” in Attachment III, are undertakings with potential to affect and cultural resources review procedures will apply.

2. USE OF NRCS PERSONNEL FOR CULTURAL RESOURCE PRELIMINARY REVIEWS

- A. The NRCS and the SHPO agree that NRCS personnel who have completed the NRCS eight (8) Module Cultural Resources Training Series and subsequent training and updates, developed by NRCS and the SHPO, may conduct limited cultural resources reviews using the MAINE NRCS Preliminary Cultural Resources Review Worksheet (Attachment IV) for undertakings where:
 - 1) the authority for resource planning is at the field office level and
 - 2) the undertaking is limited to lands owned or controlled by two or fewer persons and
 - 3) trained NRCS personnel have determined that there are no extenuating circumstances, such as buried cultural resource sites, the potential for sites with no visible surface remains, or buildings/structures fifty years or older within the area of potential effects.
- B. NRCS personnel trained to the above standards will use the following procedure. All steps of this procedure will be documented by field office personnel on the Preliminary Cultural Resources Review Worksheet and appropriate supplements or attachments:
 - 1) NRCS field office personnel will determine whether or not the planned action/practice is an undertaking by using the list in Attachment III.
 - 2) Trained NRCS field office personnel will complete a Preliminary Cultural Resources Review Worksheet (Attachment IV), to determine if cultural resources are present or if the area of potential effects (APE) has characteristics that warrant field inspection by a specialist or needs subsurface investigation.
 - 3) When NRCS field office personnel have determined that the activity is an undertaking or other criteria are met, indicating sensitivity of location or the presence of cultural resources, then the worksheet is sent to the NRCS Cultural Resource Coordinator (CRC). All activities considered as undertakings will have reviews completed and submitted to the Cultural Resources Coordinator for further review.
 - 4) The NRCS (CRC) will review the information for completeness and if further evaluation is presumed to be needed, the NRCS review worksheet is sent to the SHPO for final decision. The SHPO will determine if the CRC is qualified to make this determination. The CRC may conduct reviews of NRCS Cultural Resource files/Site Data, journal articles, or work with NRCS Cultural Resources Specialist as needed.

Potentially sensitive areas of potential effect (APEs) will then be forwarded to the SHPO by the CRC. An NRCS Cultural Resource Specialist (CRS) may be contacted for guidance by the CRC, as necessary.

- 5) The SHPO or CRS will analyze the information and determine whether or not further investigations are required. The SHPO agrees to respond to the CRC within 30 working days.
- C. If no further surveys or other investigations are required by the SHPO, the CRC will notify the field office, provide copies of pertinent correspondence, and the work may proceed. If further work is required by the SHPO, the CRC will notify the District Conservationist (DC) who will, in consultation with the CRC:
- 1) Re-evaluate alternatives to planned action(s) with landowner, in lieu of conducting further investigation.
 - 2) Inform NRCS CRC of decision regarding alternative(s).
 - 3) If alternative, non-sensitive location or non-ground disturbing action can be planned, the DC documents alternative, and via the CRC, consults with the SHPO on selected avoidance strategy, and proceeds with assistance.
 - 4) If no feasible alternative can be found, the CRC will arrange for a Cultural Resource Specialist (CRS), if available, to proceed with surveys or investigation. If NRCS funding is available, NRCS contracting procedures will be followed if outside sources of Specialist(s) assistance is needed.

This may include:

- (a) A site visit (survey) to obtain additional technical information and/or confirm the SHPO's recommendation about the sensitivity or likelihood of the APE having significant cultural resources.
 - (b) The CRC will obtain a cost and time estimate for further investigation. The CRC will discuss the need and feasibility of further investigation with the DC who informs the landowner of NRCS requirements and technical assistance or funding decisions.
 - (c) The DC and the landowner will make the decision consistent with NRCS policy and established procedures.
- 5) A continuation of NRCS assistance is contingent on adequate funding or staff to complete needed investigations, as determined by the NRCS State Conservationist.
 - 6) If funding is available, but the landowner does not wish NRCS to proceed according to policy, then NRCS will withdraw all assistance related to the undertaking(s).

3. SITE REPORTING

The NRCS agrees to report cultural resources found within the APE per GM 401.41 on a SHPO approved site form for cultural resources (Example subject to change is shown in Attachment V). A copy of each form will be submitted to the CRC for review and submission to the SHPO.

ARCHAEOLOGICAL SITE FORMS, STATE AND FIELD OFFICE FILES RELATING TO ARCHAEOLOGICAL SITES ARE NOT PUBLIC INFORMATION AND ARE NOT SUBJECT TO THE FREEDOM OF INFORMATION ACT per Section 304 of the NHPA and the Archaeological Resources Protection Act (ARPA).

4. AVOIDANCE OF CULTURAL RESOURCE DAMAGE

NRCS agrees to conduct activities in a manner to avoid adverse impact to cultural resources, whenever practical, during the planning and implementation of undertakings. Field inspections and phase 1 or 2 investigations are conducted to determine the physical extent and significance of sites.

NRCS and the SHPO agrees that a NRCS, CRC and CRS in consultation with the SHPO will review all reports to recommend and plan practices to protect site, modifications of undertaking, and recommend appropriate buffers or setbacks to avoid or reduce adverse effects to sites.

5. PUBLIC CONSULTATION

NRCS will consult with the public as is appropriate for the size and nature of the undertaking. At a minimum, this will consist of the landowner, any NRCS partner involved (such as the local conservation district) and any other individual or public entity showing an interest in the project.

6. TRIBAL CONSULTATION

NRCS will consult with any interested federally recognized tribes with tribal lands within the state of Maine on a government to government basis. This consultation may result in agreements, which will include procedures NRCS will follow on tribal lands and on land, which the tribe holds as ancestral lands. The SHPO will be part of these consultations and subsequent agreements with all tribes who do not have Tribal Historic Preservation Officer (THP) responsibilities and; if invited by the tribe they will also be involved in consultation and agreements with those tribes who do have THPO responsibilities.

NRCS will also consult with federally recognized tribes not owning lands within the state but who claim ancestral lands which may hold cultural or religiously significance for the tribe. Agreements with tribes will be developed as needed, based on tribal requests. These consultations will also be conducted on a government basis.

7. HUMAN REMAINS

If human remains are discovered in the area of potential effect during the planning or implementation of an undertaking, all activities deemed likely to damage the remains will cease and the following steps will be taken;

- A. An NRCS representative will immediately contact local law enforcement authorities, the SHPO's office and the NRCS CRC.
- B. The State coroner will determine whether or not the remains of recent origin.
- C. The NRCS will arrange for a Cultural Resource Specialist, in cooperation with the SHPO, to determine ethnicity of remains and approximate age. The SHPO or representative may

elect to be on hand to provide this service and specify measures to further protect cultural resources as needed.

- D. If the remains are of Native American origin and not a law enforcement investigation, NRCS will follow procedures and consult with the SHPO in development of an appropriate plan for the discovery.
- E. NRCS field personnel and any contractors will take appropriate measures to protect the remains unless the coroner or law enforcement authorities take responsibility. NRCS will assure that the remains are protected until treatment is completed.
- F. Planning and construction activities at the site can continue only after NRCS and the SHPO agree that the plan for treating remains has been properly implemented.

NOTE: Maine State law requires re-burial of Native American remains with appropriate tribe as determined by the SHPO, after a maximum of one year of study. Human remains are NOT the property of private landowners.

NRCS will also comply with 13 M.R.S.A. 1371. Approval for repair and removal and 1371-A. Limitations on construction and excavation near burial sites.

8. CURATION ARRANGEMENTS

NRCS and the SHPO agree that non-burial related artifacts recovered on private land are the property of the landowner and will be returned after necessary study and cataloging meeting Federal standards. However, where landowners relinquish ownership of artifacts, NRCS agrees on behalf of the landowner to turn over artifacts, copies of original documentation and reports to a facility meeting curation standards pursuant to 36 CFR Part 79.

9. ACCESS TO CULTURAL RESOURCE SITE AND SENSITIVITY INFORMATION

The SHPOs office agrees to review and comment on up to two conservation plans per week for a general cultural resources sensitivity analysis, when adequate maps, photographs and soils data are provided by NRCS. These plans will be sent to the SHPO via the CRC after consultation with the District Conservationist.

Up to date, Cultural Resources sensitivity maps may be made available to NRCS by the SHPO, to assist NRCS personnel in review of undertakings. These maps and other cultural resources files will be securely maintained with data made available only to appropriate NRCS personnel with cultural resources planning responsibility, as determined by the SHPO.

10. COMPLIANCE DOCUMENTATION

The NRCS shall ensure that reports on all activities carried out according to the agreement are provided to the Maine SHPO and, upon request, to other interested parties (subject to restrictions contained in Section 304 of NRPA and section 9(a) of the Archaeological Resources Protection Act).

- A. NRCS agrees that the CRC will provide a fiscal year summary of the total number of undertakings and cultural resources evaluations completed by each NRCS office to the SHPO annually by October 31. The summary will include the total number of evaluations,

conducted by NRCS at all levels of review. This documentation may be in the format of NRCS Performance Reports Measurement Systems per year end report with other information as needed and specified by the SHPO.

- B. NRCS agrees to provide the SHPO with copies of all phase 0, 1, 2, 3 field investigation reports, field data sheets, and related information upon their completion.
- C. NRCS, in consultation with the SHPO, will conduct annual spot checks or compliance reviews of selected offices and undertakings. NRCS agrees to provide a narrative summary of spot checks or other compliance reviews, which apply to cultural resources protection. This will be provided to the SHPO's office within 30 days of the final other report to the field office. Follow up or progress reports, as needed, will also be provided to the SHPO.
- D. NRCS agrees to keep copies of cultural resource compliance documentation for all undertakings at the field office or State office level, (depending on level of review involved) and to provide copies to the SHPO as requested.
- E. NRCS cultural resource reports will meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and Maine guidelines for archaeological work (27 MRSA S. 509).

11. TRAINING

- A. NRCS will integrate cultural resources conservation and education into the agency mission statewide. Education should be geared towards operators and landowners. Volunteers may be trained to help accomplish the agency cultural resources mission.
- B. NRCS will maintain a training program adequate to increase each employee's knowledge of cultural resources, and their ability to recognize cultural resources during performance of their duties.
 - 1. The NRCS and the MHPC agree that all NRCS technical employees responsible for completing the Preliminary Cultural Resources Review will complete the NRCS National Cultural Resources Training Series and supplemental State Training provided in cooperation with the SHPO. Employees who have not had training will work with trained individuals or the CRC to complete a Preliminary CR Review Worksheet. The Trained person will be responsible for the accuracy of the compliance documentation. Update training will be required every other year and provided by NRCS and the SHPO.
 - 2. The NRCS State Cultural Resource Coordinator (CRC) plays an integral role in the NRCS cultural resource program and shall have the Advisory Council on Historic Preservation's Section 106 training workshop within one year of beginning duties. Periodic updates are required to maintain knowledge and skills as determined by the National Cultural Resources specialist, recommended by the SHPO, etc. The CRC will also complete the NRCS National Cultural Resources Training Series and supplemental State Training provided in cooperation with the SHPO.

12. EMERGENCY WORK (EWP)

The NRCS in Maine and the SHPO agree that the following procedures will be used to ensure that the need to protect life and property in an emergency is accomplished while taking cultural resources into account to the maximum extent possible congruent with rapidly changing priorities and circumstances. Emergency situations are divided into two types:

- A. **Urgent and Compelling Actions.** The NRCS agrees to notify the SHPO of funds obligated for urgent and compelling situations. This notification should include the types and amount of funds obligated, circumstances creating the urgent and compelling situation, work to be undertaken, and any consideration of historic properties, as appropriate. The NRCS agrees to document and avoid adverse effects to cultural resources discovered during urgent and compelling work to the fullest extent practicable.
- B. **Non-Urgent and Compelling Actions.** The NRCS agrees to use the Preliminary Evaluation Worksheet, submitted to CRC for processing, as outlined in stipulation 2, above. The NRCS will use a CRS when encountering areas of high probability for cultural resources, to assess potential impacts and to plan methods to avoid damage. If these areas can not be avoided, and cultural resources are discovered, the CRC will notify the SHPO. The cultural resources will be evaluated by a CRS. The State Conservationist will make a final decision based on the CRS evaluation, consultation with the SHPO, and the ACHP, and the need to protect life and property.
- C. During certain major national disasters NRCS may waive its Section 106 responsibilities as defined in 36 CFR Part 78.

13. DISCOVERY PLANS

NRCS agrees to cease technical assistance and implementation of any undertaking upon the unanticipated discovery of a cultural resource or material. Such a discovery includes the occurrence of previously unevaluated information, data, materials or an unanticipated effect to known historic properties or cultural resources at any time that may have an effect. NRCS field staff will immediately contact the CRC who makes arrangements for APE evaluation by a CRS for a determination of significance.

NRCS agrees to provide information to the SHPO about the site on a Cultural Resources Site Reporting Form (Attachment V) along with all data and evaluation reports.

14. STEWARDSHIP

The NRCS recognizes that cultural resources are an integral part of our nation's resources and will ensure that these resources are fully considered in all NRCS undertakings. The conservation ethic of NRCS is in harmony with mandates requiring Federal agencies to become active partners in the stewardship of our nation's cultural resources.

Therefore, NRCS and the MHPC mutually agree to share and exchange, technology as appropriate and in the best interest of cultural resource protection and management.

NRCS agrees, as time and funding allow, to provide technical assistance in erosion control and other protection of cultural resources when requested by the SHPO. Requests will be coordinated through the CRC.

SHPO agrees to review a maximum of 2 conservation plans per week and provide sensitivity review of undertakings after preliminary review by the NRCS field office and the CRC.

15. EVALUATION OF SIGNIFICANCE

In consultation with the State Historic Preservation Officer and following the Secretary of the Interior's Guidelines for evaluation, the NRCS Cultural Resource Specialist (who at minimum meets the Secretary of Interior's Standards and Guidelines – Professional Qualification Standards for the resource type in question) shall apply the National Register criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible. The NRCS agrees to use field and laboratory methods approved by the Maine SHPO, according to state standards, and significance factors established by the SHPO, in Maine State Historic Preservation Plan or equivalent.

16. ACCESS TO SPECIALISTS

NRCS agrees to maintain regular and continuing access to a Cultural Resources Specialist.

The Cultural Resource Specialist or Specialists shall at minimum meet the qualifications contained in Secretary of the Interior's Standards and Guidelines – Professional Qualifications Standards for the type of work needed (pre-historic archaeology, historic archaeology, architectural historian, etc.) have experience in northern New England area cultural resources.

NRCS will maintain this access by (1) hiring (either permanent or temporary) a Cultural Resources Specialist; 2) contracting needed investigations and surveys for actions beyond the scope of NRCS field employee qualifications, certifications and responsibility, as agreed by the SHPO; or 3) sharing a CRS with another federal agency.

17. QUALITY ASSURANCE AND CONTROL

The SHPO agrees to review training materials and to assist in providing training to NRCS personnel as needed.

18. ITEMS NOT SPECIFICALLY COVERED BY THIS AGREEMENT

The NRCS and the SHPO agree that all matters not discussed in this supplemental agreement will be handled in accordance with SCS General Manual 420 Part 401.

19. DURATION OF AGREEMENT

This memorandum of agreement will continue in full force and effect in effect for five years from the signature date, until superceded by a new National Agreement, or until one or both signatories request its review for possible modification.

20. TERMINATION OF AGREEMENT

Either party to this Agreement may terminate it upon by providing sixty- (60) days notice to the other party.

21. NONDISCRIMINATION

Activities conducted under this agreement will be in compliance with the nondiscrimination provisions as contained in the Title VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987 (Public law 100-259 and other nondiscrimination statutes, namely section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and in accordance with regulations of the Secretary of Agriculture (7CFR-15, Subparts A and B) which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Agriculture or any agency thereof.

United States Department of Agriculture
Natural Resources Conservation Service
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BY: _____ Russell Collett _____ DATE: _____ 12/32/01 _____
State Conservationist

Maine State Historic Preservation Commission
55 Capitol Street, State House Station 65
Augusta, ME 04333

BY: _____ DATE: _____
State Historic Preservation Officer
Director, MHPC